IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8029 OF 2004

Messrs Talera Automobiles Pvt.Ltd.& Anr...Petitioner.

Versus

Special Recovery Officer & Ors. ..Respondents.

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Mr. P.K. Dhakepalkar with Madhav Jamdar for the Petitioner.

Mr. Rajesh Datar & M.B.Patil for Respondent No.2.

Mr. D.A.Patil, AGP for the Respondents 3 & 4.

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**CORAM : S. A. BOBDE, J.**

**DATED : 14TH JULY, 2005.**

**P.C.:**

1. Rule, returnable forthwith.

2. Mr. Datar waives service of rule for the Respondent No.2. Mr. Patil, AGP waives service of rule for the Respondent Nos. 3 and 4.

3. Heard by consent.

4. The petitioners are aggrieved by the order passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune in Revision under section 154 of the Maharashtra Co-operative Socities Act.

5. The petitioners contention before the revisional authority was that the recovery certificate issued against them is illegal in view of the fact that they are not borrowers nor do they have any concern with the loan obtained by M/s. Dighi Agencies Pvt. Ltd.. The revisional authority has, while purporting to lift the corporate veil, come to the conclusion that since the certificate issued in the name of M/s. Dighi Agencies is exclusively against the petitioners who claim to be the tenants. It is difficult to uphold the finding that the tenancy in favour of the petitioners is bogus, as observed by the revisional authority. The jurisdiction of the revisional authority is limited to questioning the validity of the recovery certificate and related matters. It could not have, while deciding the

validity of the recovery certificate and its execution, given a declaration that the tenancy of the petitioners is bogus. The jurisdiction to do so, has been conferred by the Rules framed under the Act on the authority under Rule 107, which empowers the Sale Officer to investigate the claim or objection and disposed it of on merits. Sub-rule 19(c) of Rule 107, provide that if an objection is preferred to the party against whom an order is made may institute a suit to establish the right, which he claims to the property in dispute and the order of the sale officer is made final subject to the result of the suit. It appears that the revisional authority was conscious of the aforesaid provisions and therefore, directed the petitioners to take recourse to Rule 107 (19)(c). However, the direction has been restricted to movables only. I see no reason why the revisional authority did not relegate the petitioners to the remedy under Rule 107 even in regard to the immovable property in question. There appears to be no reason for making such distinction. It appears that even otherwise, the revisional authority had no jurisdiction to decide the revision in view of the fact that admittedly, the petitioners had not deposited the amount as required by section 154 (2)(A) of the Co-operative Societies

Act. The impugned order of the revisional authority is, therefore, liable to be and is hereby set aside. The petitioners may take recourse to Rule 107 (19) and follow the procedure or remedy thereunder, if the decision is adverse to the petitioners.

6. Rule is therefore, made absolute in the above terms.

7. The sale officer is directed to decide the petitioners' objection within three months from the date the petitioners lodge objection. The petitioners may lodge objection on or before 27th July, 2005.

14.07.2005 (S.A.BOBDE,J.)